

In The Matter Of:

TERRA FIRMA INVESTMENTS

v.

CITIGROUP INC.

Punja, Riaz - 07/28/2010

July 28, 2010

CONFIDENTIAL

MERRILL CORPORATION

Legalink, Inc.

225 Varick Street
10th Floor
New York, NY 10014
Phone: 212 557 7400
Fax: 212 692 9171

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 134

13:14:12 1 BY MR. COHEN:

13:14:18 2 Q. Do you recall that Cerberus contacted Terra Firma
13:14:19 3 the day after the bid to see if it could participate in the
13:14:21 4 transaction?

13:14:27 5 MR. SHERMAN: Objection.

13:14:27 6 A. I recall Guy asking me to see somebody at Cerberus.

13:14:28 7 BY MR. COHEN:

13:14:30 8 Q. Do you remember when that was?

13:14:33 9 A. It was after the recommended bid.

13:14:33 10 Q. Can you place that in time for me any more
13:14:35 11 precisely?

13:14:40 12 A. No, I can't.

13:14:46 13 Q. Let's mark this Exhibit 16, an e-mail from
13:14:53 14 David Melvin to Mr. Hands and Mr. Punja, Ms. Dolenec and
13:15:15 15 it's dated Tuesday, May 22, 2007 and it bears Terra Firma
13:15:16 16 production number 151034.

13:15:18 17 (Exhibit 16 marked for identification.)

13:15:37 18 Why don't you have a look at that and let me know
13:15:38 19 when you're ready?

13:15:40 20 A. Okay.

13:15:41 21 Q. Do you know Mr. Melvin?

13:15:46 22 A. Yes, I do.

13:15:48 23 Q. And by whom was he employed in 2007?

24 A. I believe Merrill Lynch.

25 Q. And do you know whether Merrill Lynch was advising

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 135

13:15:55 1 any of the prospective bidders for EMI?

13:15:58 2 A. No, I don't.

13:16:01 3 Q. Do you recall seeing this e-mail on or about

13:16:06 4 May 22, 2007?

13:16:09 5 A. No, I don't.

13:16:15 6 Q. Does this e-mail refresh your recollection that the

13:16:20 7 day after the bid Cerberus was seeking a way to participate

13:16:22 8 in Terra Firma's transaction?

13:16:24 9 MR. SHERMAN: Objection.

13:16:25 10 A. This e-mail does not.

13:16:30 11 BY MR. COHEN:

13:16:33 12 Q. Are you aware -- did you become aware after May 21,

13:16:34 13 2007 that Cerberus was seeking to participate in a

13:16:36 14 transaction?

13:16:39 15 MR. SHERMAN: Same objection.

13:16:42 16 A. I had a note to speak to somebody at Cerberus and

13:16:42 17 I had a meeting with that person.

13:16:44 18 BY MR. COHEN:

13:16:47 19 Q. Who did you meet with at Cerberus?

13:16:50 20 A. A Guy called David somebody.

13:16:52 21 Q. David Teitelbaum?

13:16:56 22 A. Sounds familiar, but I can't remember.

13:16:58 23 Q. When did that meeting take place?

24 A. I don't have the precise dates.

25 Q. Where was the meeting?

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 136

13:17:14 1 A. I believe it was at Terra Firma's -- one of
13:17:22 2 Terra Firma's offices.

13:17:25 3 Q. Would you go back to Exhibit 2, please. It's the
13:17:35 4 e-mails that we looked at, one of which was from
13:17:40 5 Mr. Alexander. Thank you, Mr. Sherman. If you'd look at
13:17:45 6 the e-mail on the third page from Mr. Seymour to Mr. Hands
13:17:45 7 in which you're copied dated September 24, 2007 Mr. Seymour
13:17:49 8 says:

13:17:53 9 "Riaz and I met with David Teitelbaum from
13:17:57 10 Cerberus in June - a very preliminary discussion after
13:18:00 11 receipt of their proposed term sheet for a PIK
13:18:01 12 investment - though to my recollection Ames did not
13:18:02 13 come up at this time."

13:18:03 14 Do you see that, sir?

13:18:05 15 A. Yes, I do.

13:18:07 16 Q. So we understand and have a clear record, was
13:18:08 17 Mr. Seymour a member of your team in 2007?

13:18:11 18 A. Yes, he was.

13:18:12 19 Q. And did he work on the EMI transaction?

13:18:17 20 A. Yes, he did.

13:18:17 21 Q. And is a PIK investment a payment in kind preferred
13:18:18 22 investment?

13:18:20 23 A. Typically, yes.

24 Q. And what does that mean?

25 MR. SHERMAN: Objection.

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 137

13:18:30 1 A. Well, it's usually a piece above equity.

13:18:33 2 BY MR. COHEN:

13:18:38 3 Q. And does this document refresh your recollection
13:18:41 4 the person you met with from Cerberus was David Teitelbaum?

13:18:43 5 A. I don't remember the name Teitelbaum but, yes,
13:18:45 6 David I remember the name.

13:18:48 7 Q. Can you tell me, as best you can recall --
13:18:52 8 withdrawn. Was there one meeting with Cerberus or more than
13:18:53 9 one where you participated?

13:18:55 10 A. I only recall one.

13:18:56 11 Q. Do you know whether other people from Terra Firma
13:18:57 12 had other meetings?

13:19:00 13 A. I don't know.

13:19:03 14 Q. Did you meet with Merrill Lynch in connection with
13:19:04 15 Cerberus' possible participation in a transaction?

13:19:06 16 A. No, I didn't.

13:19:07 17 MR. SHERMAN: Let him finish his question.

13:19:09 18 BY MR. COHEN:

13:19:10 19 Q. Tell me everything you recall about the meeting
13:19:12 20 with David from Cerberus?

13:19:15 21 MR. SHERMAN: Objection.

13:19:18 22 A. I thought it was Francois and I, but it may have
13:19:29 23 been Stephen and I. I can't remember. Stephen Seymour that
24 is. We met David who said to me that -- I can't remember
25 the exact words, but basically they would like to continue

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 138

13:19:41 1 to participate in the EMI transaction since they had spent
13:19:44 2 so much time and work on it and therefore would be
13:19:48 3 interested in what I would call the mezzanine piece. And
13:19:52 4 I recall going through it in very broad terms with him of
13:19:58 5 what kind of returns they would be looking for from the
13:19:59 6 equity kicker if you like and not being too impressed by it.
13:19:59 7 That's all I remember.

13:20:03 8 BY MR. COHEN:

13:20:05 9 Q. Did you have any discussion with Cerberus about
13:20:07 10 whether or not they had actually bid?

13:20:09 11 A. No, I did not.

13:20:17 12 Q. Was there any discussion about bid prices?

13:20:21 13 A. No, there wasn't.

13:20:27 14 Q. Did you ever raise with Mr. Hands the question of
13:20:29 15 how Mr. Wormsley would've learned of the price at which
13:20:30 16 Cerberus was preparing to bid?

13:20:34 17 A. No, I didn't.

13:20:38 18 Q. Did Mr. Hands ever tell you how Mr. Wormsley
13:20:39 19 learned that Cerberus was intending to bid 2.62?

13:20:40 20 A. No, he didn't.

13:20:46 21 Q. Did anyone ever tell you that?

13:20:52 22 A. No.

13:20:57 23 Q. Do you recall that in the summer of 2007 the bid
24 that Terra Firma made was conditional upon a certain
25 percentage of shareholder approval?

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 139

13:21:02 1 A. Yes.

13:21:03 2 Q. Do you recall what that percentage was?

13:21:07 3 A. 90 percent.

13:21:10 4 Q. And do you recall what the period was for which the

13:21:12 5 offer was initially open?

13:21:14 6 A. I think it was 60 days.

13:21:15 7 Q. Do you recall whether there were any extensions of

13:21:19 8 the deadline?

13:21:21 9 A. I believe there was a postal strike and there was a

13:21:24 10 couple of days extension.

13:21:26 11 Q. Do you recall whether there were any intermediary

13:21:26 12 extensions?

13:21:28 13 MR. SHERMAN: Objection.

13:21:29 14 A. Please define what you mean?

13:21:31 15 BY MR. COHEN:

13:21:35 16 Q. It depends on your understanding. Is it your

13:21:42 17 understanding that the bid that was made by Terra Firma had

13:21:45 18 to be kept open for 60 days after it was posted?

13:21:48 19 A. You mean if we got the acceptances?

13:21:57 20 Q. If you did not get the acceptances. My question is

13:21:57 21 whether you recall whether the 60 day period was in fact --

13:21:58 22 A. Was mandatory?

13:21:58 23 Q. Yes.

24 MR. SHERMAN: Let him finish. Now I don't

25 understand the question.

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 143

13:26:31 1 to authorize the purchase of shares at up to 285p?

13:26:33 2 MR. SHERMAN: Objection.

13:26:34 3 A. No, I did not.

13:26:36 4 BY MR. COHEN:

13:26:42 5 Q. Do you recall anyone at Terra Firma suggesting in

13:26:46 6 May of 2007 that intervening in the market at up to 285p was

13:26:47 7 too high a price to pay for EMI?

13:26:50 8 MR. SHERMAN: Objection.

13:26:52 9 A. Everyone who would have made the decision would

13:26:53 10 have had this table in front of them.

13:26:55 11 BY MR. COHEN:

13:26:56 12 Q. Everyone who made the decision to go up to 285p in

13:27:01 13 the market?

13:27:04 14 A. I assume the investment committee, I assume, but

13:27:06 15 conjecture on my part.

13:27:08 16 MR. COHEN: Is that an objection or are we just

13:27:10 17 issuing instructions now?

13:27:11 18 MR. SHERMAN: No, he turned to me and I said "go

13:27:14 19 ahead".

13:27:15 20 A. They would have been looking at this same chart

13:27:16 21 presumably.

13:27:22 22 BY MR. COHEN:

13:27:32 23 Q. Could you go back to Exhibit 3 again, the May 18th

24 Investment Advisory Committee meeting. I want to go through

25 a couple more pages and ask you if you're familiar with

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 144

13:27:44 1 them. First let me ask you to return your attention to --
13:28:02 2 turn your attention to the page that bears the Bates number
13:28:06 3 81412 "Reduce Fixed Cost Base" on top. Was this work with
13:28:06 4 respect to incremental cost savings at EMI, was this done by
13:28:08 5 your team?

13:28:12 6 MR. SHERMAN: Objection.

13:28:13 7 A. It'd have been done by the greater team.

13:28:15 8 BY MR. COHEN:

13:28:21 9 Q. And who was in charge of estimating the reduction
13:28:23 10 in cost base at EMI?

13:28:25 11 MR. SHERMAN: Objection: foundation.

13:28:25 12 A. Who would have led that?

13:28:28 13 BY MR. COHEN:

13:28:30 14 Q. Yes, who led the effort for the analysis of the
13:28:32 15 reduction in the costs of EMI?

13:28:33 16 A. That would be the operational side.

13:28:35 17 Q. Is that Mr. Alexander?

13:28:36 18 A. And/or Michael.

13:28:38 19 Q. Michael who, sir?

13:28:40 20 A. Hedegaard.

13:28:41 21 Q. Did Mr. Hedegaard report to Mr. Alexander?

13:28:43 22 A. Yes.

13:28:46 23 Q. Was Mr. Hedegaard a managing director at the time?

24 A. No, he wasn't.

25 Q. Was Mr. Alexander the senior operational managing

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 145

13:28:52 1 director?

13:28:53 2 A. Yes, he was.

13:28:54 3 MR. SHERMAN: Note my objection to the last
13:28:54 4 question.

13:29:00 5 BY MR. COHEN:

13:29:19 6 Q. Could you turn to page 140 of this document which
13:29:19 7 bears the Bates number 81513. Are you there?

13:29:27 8 A. Yes.

13:29:36 9 Q. Have you ever seen broker estimates for EMI?

13:29:37 10 A. I would have done, yes.

13:29:37 11 Q. Was this information collected by the financial
13:29:38 12 team?

13:29:39 13 MR. SHERMAN: Objection.

13:29:39 14 A. Most likely.

13:29:43 15 BY MR. COHEN:

13:29:46 16 Q. And do you see that there's a column that says:
13:29:46 17 "Standalone Target Price."

13:29:57 18 A. Yep.

13:30:01 19 Q. Do you know what that refers to?

13:30:05 20 A. I'm not sure.

13:30:08 21 Q. Have you ever seen a broker or analyst report
13:30:10 22 relating to EMI?

13:30:16 23 A. I would have read a few, probably.

24 Q. Are analysts -- do analysts project stand-alone
25 target prices for companies?

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 146

13:30:32 1 A. When you say -- well again, stand-alone probably
13:30:36 2 means the company operating as it currently is, is how
13:30:39 3 I would read it, but I can't be sure.

13:30:46 4 Q. And can you tell me why the Investment Advisory
13:30:50 5 Committee recommended to the partners an offer of 265 pence
13:30:57 6 per share for EMI when the stand-alone target price reported
13:31:00 7 by brokers was between 190 and 240 pence?

13:31:03 8 MR. SHERMAN: Objection.

13:31:08 9 A. You're not going to get a company at a discount in
13:31:12 10 the market. You have to create value. So all our analysis
13:31:13 11 was about creating value and creating a higher value for the
13:31:13 12 company.

13:31:16 13 BY MR. COHEN:

13:31:18 14 Q. Was that unique to the EMI transaction, the need to
13:31:18 15 pay a premium over the share price?

13:31:19 16 MR. SHERMAN: Objection.

13:31:19 17 A. No.

13:31:24 18 BY MR. COHEN:

13:31:30 19 Q. And why not?

13:31:33 20 A. Again, I'm not an expert on public to privates, but
13:31:35 21 typically no shareholder will sell at a discount to the
13:32:01 22 share price.

13:32:08 23 Q. Would you put that document aside, please.

24 Exhibit 17 is an IAC update, dated 31 May, 2007 and it bears
25 Terra Firma production numbers 97006 through 97011.

CONFIDENTIAL
Punja, Riaz - 7/28/2010

Page 147

13:32:30 1 (Exhibit 17 marked for identification.)

13:32:42 2 MR. SHERMAN: Take your time and look at the
13:32:42 3 document, if you'd like to.

13:32:45 4 BY MR. COHEN:

13:33:06 5 Q. Let me know when you've had a chance to look at
13:33:12 6 that, sir. Again, I'm most interested in this document on
13:33:44 7 page 4 entitled "Revised Returns", but you can read anything
13:33:47 8 you'd like.

13:33:53 9 A. Okay.

13:33:56 10 Q. Can you tell me why a presentation was made to the
13:34:03 11 Investment Advisory Committee on May 31, 2007 that was
13:34:05 12 looking at returns on offer prices between 265p and 305p?

13:34:09 13 MR. SHERMAN: Objection: document speaks for
13:34:12 14 itself; foundation.

13:34:12 15 A. I have no idea.

13:34:15 16 BY MR. COHEN:

13:34:22 17 Q. Were you expecting somebody to bid somewhere
13:34:23 18 between 265 and 305p on May 31, 2007?

13:34:25 19 MR. SHERMAN: Objection.

13:34:26 20 A. I don't recall.

13:34:29 21 BY MR. COHEN:

13:34:33 22 Q. Was this document prepared by your team?

13:34:35 23 MR. SHERMAN: Objection.

24 A. I have no reason to believe it wasn't.

25 BY MR. COHEN:

CONFIDENTIAL

Punja, Riaz - 7/28/2010

Page 148

13:34:42 1 Q. And as you sit here today you don't have any
13:34:44 2 understanding as to why your team was running models and
13:34:47 3 presenting models to the Investment Advisory Committee at
13:34:51 4 prices up to 305p?

13:34:55 5 MR. SHERMAN: Objection: foundation, among others.

13:34:56 6 A. They may have been instructed to do so.

13:34:56 7 BY MR. COHEN:

13:34:57 8 Q. By you?

13:34:59 9 A. No.

13:35:02 10 Q. Who would've instructed them?

13:35:02 11 A. Not necessarily me. It could be anybody in the
13:35:06 12 team.

13:35:08 13 Q. Well, who on the team had the authority to instruct
13:35:09 14 the people who were responsible for these models?

13:35:14 15 MR. SHERMAN: Objection.

13:35:18 16 A. Well, Stephen Alexander, Michael Hedegaard,
13:35:18 17 Guy Hands. We were a large team.

13:35:21 18 BY MR. COHEN:

13:35:27 19 Q. Did you have any discussions with anyone in May of
13:35:30 20 2007 that you can remember about increasing the bid price
13:35:35 21 above 265 pence?

13:35:37 22 A. I don't recall doing that.

13:35:43 23 Q. Did anyone tell you in May 2007 that there was an
24 intention to increase the bid price for EMI?

25 A. I don't recall anyone telling me.